

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 568 of 2016

Swapan Majhi

-vs.-

The State of West Bengal

For the Appellant : Mr. Somopriyo Chowdhury

For the State : Mr. S.G. Mukherjee, Ld. P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Dutta.

Heard on : 18.07.2022, 01.08.2022, 05.08.2022
&17.08.2022

Judgment on : 26.09.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred challenging the judgment and order of conviction dated 17.08.2016 and 18.08.2016 passed by the learned Additional Sessions Judge, Kalna, in Sessions Case No. 32 of 2009 wherein the learned trial Court was pleased to convict the appellant under Section 324/354 of the Indian Penal Code and sentenced him as follows:

- 1) To suffer Rigorous Imprisonment for three years and to pay a fine of Rs.2,000/- in default Rigorous Imprisonment for six months for the offence under Section 324 of the Indian Penal Code.
- 2) To suffer Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default Rigorous Imprisonment for three months for the offence punishable under Section 324 of the Indian Penal Code.

The origin of the present case relate to Kalna Police Station case no. 29/09 dated 16.02.2009 under Section 341/354/326/307/34 of the Indian Penal Code which was registered on the basis of a complaint lodged by Mukti Hawlader with the Officer-in-charge of the said police station. It was alleged that on 15.02.2009 at about 7.00 pm in the evening when the complainant was going to bathroom someone caught hold of her from behind and as a result she fell down but subsequently stood up. At that time someone threw acid on her and when she looked up she found that it was Swapan Majhi and Dhiren Majhi who were standing beside her. She raised hue and cry when Depali Sarkar a neighbour came out of her house and she along with other neighbours took the complainant to hospital as her family members were not present at that time at her residence. The complainant alleged that the accused persons knowing the fact of absence of any family member attacked the complainant in order to murder her. It was also alleged that the accused earlier attacked her for which a case is pending in which Swapan Majhi was arrested and as such the

complainant requested the police authorities to take steps for punishing the appellant severely.

The Investigating authorities on conclusion of investigation submitted charge-sheet under Sections 341/354/326/307/34 of the Indian Penal Code against the present appellant and one Dhiren Majhi. The case was thereafter committed by the learned ACJM, Kalna to the learned Sessions Judge after complying with the provisions of Section 207 of the Code of Criminal Procedure. The case was tried by the learned Additional Sessions Judge, Kalna who framed charges under Sections 354/326/307 of the Indian Penal Code on 15.02.2010, subsequently the charges were amended on 30.08.2012 to Sections 354/326/307/34 of the Indian Penal Code.

Prosecution in order to prove its case relied upon 14 witnesses namely, PW1, Mukti Hawlader/complainant/injured victim; PW2, Depali Sarkar, neighbour who arrived and took the complainant to hospital; PW3, Monoranjan Mondal, a local resident; PW4, Dr. Snehanshu Kalna, doctor who treated the victim after admission; PW5, Dr. Jayanta Biswas, doctor who admitted the complainant in the hospital; PW6, Ashis Pramanik, scribe of the FIR; PW7, Milan Hawlader, elder brother of the complainant; PW8, Biswajit Sardar, neighbour; PW9, Bablu Majhi, neighbour; PW10, Paresh Karmakar, neighbour; PW11, Khokan Kirtaniya, neighbour; PW12, Bakul Hawlader, mother of the complainant; PW13, Asim Mukherjee, 1st Investigating Officer; PW14, Sunil Kumar Dey, 2nd Investigating Officer.

The documents which were relied upon by the prosecution included the written complaint, Ext.1; Injury report, Ext.2; photocopy of outdoor emergency ticket of Kalna S.D. Hospital, Ext.3; sketch map with index of place of occurrence, Ext.4; treatment sheet of Kalna S.D. Hospital and signature of Dr. Snehanshu Kalna, Ext.5; certified copy of the written complaint and Formal FIR, Ext.6.

PW1, Mukti Hawlader, victim and the complainant of the instant case deposed that she filed the case against Swapan Majhi and Dhiren Majhi and identified them in Court. She stated that the incident occurred on 15.02.2009 at around 7.00 pm in front of the bathroom of her house, when she was going to the bathroom the accused Swapan Majhi embraced her from behind and tried to put something on her when she resisted and some liquid fell from hand of the accused on her hand and immediately there was a burning sensation, she fell down and the accused threw some more liquid on her. She felt severe pain on her back and raised hue and cry when Depali Sarkar, a next door neighbour along with other people came to her house and took her to hospital in a vehicle. She added that Swapan Majhi used to advance indecent proposals to which she never agreed and for which he poured acid on her to take revenge. She also stated that prior to this incident on an earlier occasion when she was in kitchen boiling milk at her house, the same accused came and embraced her from behind. The accused knows when the family members are absent and often used this as an opportunity. Her mother has also warned the accused earlier not to repeat such act. The earlier incident occurred two months prior to

the present incident of throwing acid on her. The accused often threatened the complainant with dire consequences and he threw acid for satisfying his grudge. The accused person and his associate often threatened the complainant when she went to school. The complainant also stated that the FIR was drafted by Ashis Pramanik according to her instructions and she after reading and understanding the same signed it and the same was handed over to the police station by her brother Milan Hawlader. The FIR was admitted in evidence and marked as Ext.1.

PW2, Depali Sarkar is a neighbour who arrived at the place of occurrence on hearing hue and cry and took the complainant to hospital. The witness stated that the incident occurred on 15.02.2009 at about 7.00 p.m. in the house of Mukti Hawlader, when she was cooking food in her house and heard hue and cry and as such rushed to the house of Mukti Hawlader. She stated that many other persons also arrived at the place of occurrence and it was seen that Mukti was lying on the ground suffering from severe pain, and on being asked she stated that Swapan Majhi and Dhiren Majhi poured something on her body for which she sustained burning sensation. She also deposed that Biswajit Sardar who was present at the spot brought his van by which Mukti was taken to hospital, many local people like Bablu Majhi, Paresh Debnath, Khokon Kirtania were also present. The injured victim/PW1 was admitted at the hospital and she remained therein for eight days for her treatment. It was the doctor who informed her that acid was poured on the person of PW1. The witness also stated that Swapan Majhi tried to outrage modesty of Mukti and

Mukti filed a case against him, thus in order to take revenge Swapan had done this act. The witness identified both the accused persons in Court.

PW3, Monoranjan Mondal is a resident of the locality who stated that he knew Anil Hawlader and Mukti Hawlader as also the accused persons as they belong to the same locality. The witness identified the accused persons and stated that the incident occurred at about 6.30 pm about 1½/2 years ago. On hearing hue and cry of Depali Sarkar she went to the house of Netai Mondal. Witness denied of seeing any incident as such he was declared hostile.

PW4, Dr. Snehanshu Kalna, who stated that on 15.02.2009 he was posted at Kalna Sub-divisional Hospital wherein Mukti Hawlader was admitted in the female surgical ward and he treated her after admission. The observations of the witness are set out as follows:

“...I found superficial acid burn to the extent of 7% in the right upper arm back portion and 18% on the back. This is the verified copy of treatment sheet. Marked ‘X’ for identification. This is the xerox copy of beadhead ticket of Mukti Hawlader. The patient was discharged on 23.2.09 on request of the patient.

25% acid burn may result in septicemia or may be fatal to the patient if not attended properly and given antibiotic.”

PW5, Dr. Jayanta Biswas, admitted PW1 at Kalna S.D. Hospital. His observations in the deposition are set out as follows:

“....On 15.2.2009 I was posted in the same post. On that day I examined Mukti Howlader, female aged about 16 years c/o.Anil

Hawlder who was produced before me with acid burn over the back, lower right arm/portion of burnt/ about 25%. It was fresh wound. The patient was brought by Khokan Kirtania. This injury report has been prepared and signed by me.”

PW6, Ashis Pramanick is the scribe of the FIR who deposed that he wrote the FIR.

PW7, Milan Hawlder is brother of PW1, who deposed that on 15.02.2009 at about 7/7.30 p.m. when he was not at his residence at that time the unfortunate incident occurred. When he returned home he found that PW1 was suffering from pain due to burn in her body and she was taken to hospital where the doctor stated that she was suffering from acid burn injuries. The witness stated that PW1 was taken to hospital in the van of Biswajit Sardar by Kalipada Kirtania. The witness stated that PW1 told him when she was returning from bathroom Swapan Majhi and Dhiren Majhi threw acid on her from behind.

PW8, Biswajit Sardar is the neighbour of the complainant, he deposed before the Court that the incident occurred on 15.02.2009 at about 7-30 p.m. when he was sitting at the puja pandel. He heard the shrill/cry of a woman as 'BACHO BACHO'. Hearing the same he rushed to the house of PW1 and found that she was writhing in pain and complaining of burning sensation, at that time she was lifted and placed on a van and taken to Kalna Hospital. On the way to hospital PW1 stated that Swapan and Dhiren had thrown something on

her for which she sustained burning sensation. The witness identified the two accused persons in Court.

PW9, Bablu Majhi is also a neighbour who deposed that the alleged incident occurred on 15.02.2009 at about 7/7-30 p.m. when he was in his house. On hearing hue and cry he went to the house of PW1 and found that she was lying on the verandah of her house, shouting as '*JOLE JACHHE*'. The witness stated that Biswajit Sardar brought a van and lifted the complainant and took her to hospital. The witness also went to the hospital with his cycle and when he reached there the doctor examined the complainant and stated that acid was thrown on her back. The witness stated that the complainant had told him that Swapan Majhi had thrown acid on her. The witness identified Swapan Majhi in Court.

PW10, Paresh Karmakar is a neighbour, who deposed that the incident occurred on 15.02.2009 at about 7/7-30 p.m. when he was chatting with his friends in the club room. On hearing hue and cry he rushed towards the house of the complainant and found that two persons Depali Sarkar and Biswajit Sardar had already reached there. The witness found that the complainant was lying down and writhing in pain in the courtyard of the house. The complainant told him that Swapan Majhi had thrown something on her person. She was taken to hospital being accompanied by some of the neighbours. Dr. Jayanta Biswas, treated her at the emergency and told him that acid had been

thrown on her person and she was required to be admitted in the hospital. The witness identified Swapan Majhi in Court.

PW11, Khokan Kirtonia, a neighbour who deposed that the incident occurred on 15.02.2009 and he came to know on receiving a telephone call that the complainant suffered burn injury as someone threw acid on her. He also went to the hospital and found that doctor had tied bandage on her back and leg and she was suffering from intolerable pain. The witness categorically stated that he did not hear as to who had thrown acid on her.

PW12, Bakul Hawlader is mother of the complainant, she deposed that the incident occurred on 15.02.2009 at about 7.00 pm in the house of Netai Mondal where she resided. On that day she had been to her elder brother-in-law's house and heard the incident, immediately she returned home and found by that time her daughter Mukti already had been taken to hospital. She deposed that she heard from local people that Swapan Majhi and Dhiren Majhi had thrown something on Mukti and the same was narrated to her by Mukti when she had visited the hospital. She also narrated that she heard that Mukti had gone to bathroom and was returning from there when the accused persons caught hold of her and Mukti tried to flee away when the accused persons threw acid on her. She was treated at the hospital for 12 days. The witness also stated previously on one occasion when her daughter was boiling milk in the evening and was alone in the house Swapan Majhi tried to embrace her from behind for which she filed a case against him. Police also arrested the accused

in connection with the earlier case, so this time he had thrown acid to take revenge. The witness identified the accused persons in Court.

PW13 is Asim Mukherjee, who is the 1st Investigating Officer of the case. The witness stated that he prepared the rough sketch map of the place of occurrence along with index which was marked as Ext.4 and Ext.4/1. He also examined number of witnesses and conducted raid to arrest the accused persons. On his transfer he handed over the charge of investigation to the Officer-in-charge who assigned another Investigating Officer for the case.

PW14, Sunil Kr. Dey, deposed that he took up further investigation of the case as assigned by the Officer-in-charge of Kalna Police Station. In course of investigation he collected the injury report, prepared seizure list and being satisfied with the material collected submitted charge-sheet against the accused persons.

Mr. Somopriyo Chowdhury learned advocate appearing on behalf of the appellant submitted that there is every possibility of the appellant being falsely implicated in the instant case. Learned advocate has also submitted that at the first instance the appellant's names were not divulged and as such the medical reports do not reflect the name of the present appellant. There has been delay in lodging the FIR as also the fact that the sentence so imposed under Section 324 of the Indian Penal Code is excessive. Learned advocate relied upon the judgment of the Hon'ble Supreme Court in Anil Kumar Pandey -Vs. - State of Uttar Pradesh reported in (1982) 2 SCC 395; the judgment of the Bombay High

Court in Pradeep Mashelkar –Vs. State, through Police Inspector reported in 2005 SCC OnLine Bom 1776 as also a judgment of the Delhi High Court in Mam Raj &Ors. –Vs. – State reported in 2013 SCC OnLine Del 4946. By referring to the said judgments it was emphasized that in the present case also similarly placed accused persons were acquitted from all the charges and as such the present petitioner is also entitled to benefit of the same.

Mr. Sandip Chakraborty learned advocate appearing for the State has opposed the contentions advanced by Mr. Chowdhury learned advocate of the appellant and submitted that the previous grudge of the present appellant has resulted in the present incident of throwing acid upon the injured PW1. The facts narrated by PW1 relating to the incident have been corroborated by a number of witnesses and the medical documents makes out a water tight case.

The judgments relied upon by the learned advocate appearing for the appellant is dealt with before proceeding further. In Anil Kumar Pandey's case (supra) although the case was of acid being thrown and injuring the victim. However, in the said case the accused was already in custody for about 14 months and the Hon'ble Supreme Court enhanced the fine to Rs.7,500/- which was in the year 1982. In the said judgment the background of the facts has not been stated and the Hon'ble Supreme Court on perusal of the record of the said case decided to modify the sentence which was earlier passed. It can be stated that the said judgment is applicable to the facts of the said case and do not have any application relating to the facts of the present case.

In Mam Raj & Ors. (supra) the Hon'ble Delhi High Court modified the sentence with an observation that already 25 years expired when the appeal was decided. The appellant was in custody for more than five months and the lady who committed the offence had no criminal antecedents along with the fact that she had children to be looked after, for which the sentence was modified and thus the case relied upon do not apply to the present case.

In Pradeep Mashelkar (supra) the Hon'ble Bombay High Court was also pleased to convict the appellant by enhancing the fine amount. It would not be out of place to state that all the judgments so relied upon by the appellant were cases where the finding of guilt and conviction was affirmed by the Hon'ble Supreme Court or the High Courts. In none of the cases the accused were acquitted from the charges.

I have considered the evidence as a whole and I find that PW1 Mukti Hawlader in her deposition before the Court has stated the factum of a liquid being thrown upon her which created severe burning sensation over her body and caused immense pain. Such liquid was thrown upon her when she tried to set herself free from the clutches of Swapan Majhi the appellant herein.

However, in this case there are certain corroborations which adds to the series of events, to that effect the deposition of PW2, PW8, PW9 and PW10 i.e. Depali Sarkar, Biswajit Sardar, Bablu Majhi and Paresh Karmakar are relevant for consideration. Each of the witnesses have stated that they heard hue and cry or shrill and on hearing the same they rushed to the house of Mukti

Hawlder when they found that the injured Mukti Hawlder was lying on the ground with severe pain and either saying '*BACHO BACHO*' or '*JOLE JACHHE*'. All these witnesses have stated that PW1 Mukti Hawlder has narrated to them that it was the appellant who threw acid on her and as a result of which she suffered acid burn injury.

In addition to the evidence or the depositions of the aforesaid witnesses PW4 Dr. Snehanshu Kalna and PW5 Dr. Jayanta Biswas deposed before the Court from the reports that the liquid which caused burn injury or sensation upon the victim PW1/Mukti Hawlder was an acid burn injury. To that effect Dr. Kalna has stated that it was superficial acid burn to the extent of 7% in the right upper arm back portion and 18% on the back, while Dr. Biswas has stated that PW1 Mukti Hawlder suffered acid burn injury over the back, lower right arm of about 25% and the same was a fresh wound. Needless to state that neither the medical experts nor the aforesaid witnesses PW2, PW8, PW9 and PW10 could be shaken in their cross-examination by the defence and they were firm on their stand while being cross-examined.

Another additional fact which requires consideration and fortifies the contentions of PW1 is that she in her deposition before the Court stated that prior to two months of the present incident the accused Swapan Majhi embraced her from behind while she was boiling milk in the kitchen and the matter was reported to police. She also deposed that she was often threatened by the accused with dire consequences and the present incident is an outburst

of the steps taken in the earlier misdeed of the appellant. This factum is also corroborated by PW12, Bakul Hawlader, mother of the injured who stated that earlier when her daughter was boiling milk in the evening and was alone in the house the accused tried to embrace her from behind for which she filed a criminal case against him and the accused was arrested, so in order to satisfy his grudge this time the accused had thrown acid on her daughter. Having regard to the evidence which has surfaced in the trial of the present case, I am of the opinion that the finding of guilt and the order of conviction so passed by the learned trial Court do not call for any interference.

However, having regard to the time period which has elapsed in the meantime which is 13years the sentence so imposed upon the appellant in respect of the offence under Section 324 of the Indian Penal Code is reduced to one year, with the fine and the sentence under Section 354 of the Indian Penal Code remaining unaltered.

The appellant is on bail, his bail bond stands cancelled. He is directed to surrender within a week from date.

Accordingly, CRA 568 of 2016 is partly allowed.

Pending Applications, if any, are consequently disposed of.

Department is directed to communicate to the Jurisdictional Court so that all steps are taken for execution of the sentence so imposed. Department

is also directed to send back the respective Lower Court Records to learned trial Court as well as the ACJM, Kalna.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)